IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.10127/07
Gram Panchayat, Nani & Ors.
Vs.
Municipal Council, Sikar & Ors.

Date of order : 11/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Amit Singh Shekhawat for the petitioner.

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Heard learned counsel for the petitioner.

The plaintiff-petitioners have filed this writ petition challenging the order dated 17.11.2007 which was passed in an appeal filed by the defendant-respondent whereby the application for appointment of Court Commissioner was rejected. The appeal was filed against the order dated 21.2.2004 passed in the suit for perpetual injunction filed by the plaintiff-petitioner. By the application, the petitioner wanted that the Court should

appoint Court Commissioner to go on the site of the dispute and report to the Court the state of affairs as existing on ground on that day. The learned first appellate court rejected the application on the premise that the evidence could not be allowed to be collected by getting the Commissioner's appointed.

Learned counsel for the petitioner argued that appointment of Commissioner is necessary so as to enable the Court to ascertain as to the exact status of the disputed land in as much as several constructions such as temples hand pump, water tank, play ground etc. were existing on the site of the dispute.

Having heard the learned counsel for the petitioner, I find that whatever pleadings made by the learned counsel for the parties before the learned trial court and the evidence / proof / documents

produced before it, the order was based thereupon. Therefore validity of that order shall have to been examined by the learned appellate court on the basis of material forming part of record at that time. No new material can be allowed to be brought on record by the mode of appointment of Commissioner. The learned first court did not commit any error in rejecting the application.

The writ petition is therefore dismissed.

(MOHAMMAD RAFIQ), J.

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